

INITIAL STATEMENT OF REASONS

SPECIFIC PURPOSE OF THE REGULATION.

These proposed regulations are required by the 2003-2004 Budget Act, Item 6110-196-0001, Provisions 7(b) and 7(c), and apply to all programs contracting with the Child Development Division (Child Development Division) that utilize the Regional Market Rate (RMR) for provider reimbursement. The proposed regulations, in order to provide statewide consistency as well as clarify reimbursement categories and the appropriate rate of reimbursement for child care services, provide consistent definitions, conditions, and limitations on the use of certain rates, rate categories, and rate adjustments.

The proposed regulations also delete and amend portions of *California Code of Regulations, Title 5, Education*, Chapters 19 and 19.5, in order to eliminate duplication and achieve consistency with existing statutes and 2003-2004 Budget Act language.

The emergency regulations were adopted on September 4, 2003.

NECESSITY/RATIONALE.

These regulations are necessary in order for CDD contractors to implement changes in definition and application of changes to the use of the RMR ceilings as required by the 2003-2004 Budget Act. Full implementation is required by October 1, 2003.

California Code of Regulations, Title 5, Education, Chapter 19:

Section 18021. Payments to Family Day Care Providers. Subsection (a) is deleted because it is now included in Section 18074.2 of the proposed regulations. Subsection (b) is deleted because it conflicts with *Education Code* section 8222.5.

Section 18074. Applicable Regulations. This section is necessary because it establishes that except in Section 18075.1, these regulations apply to all CDD contractors who use the RMR for provider reimbursement, regardless of contract or program type.

Section 18074.1. Definitions. This section is necessary because it provides definitions for terms not already defined in *California Code of Regulations, Title 5, Education, Chapters 19 or 19.5*.

Section 18074.1(a). The phrase, "...as specified in *Education Code* section 8263(a)(2)," has been deleted, as it is duplicative. *Education Code* section 8263 is cited both as authority and as reference for Section 18074.1.

Section 18074.2. Application of Regional Market Rate Ceilings. This section is necessary because it establishes that licensed providers with established rates, or school districts with established rates that are otherwise exempt from licensing but adhere to licensing requirements, are to be reimbursed at that rate, up to the RMR ceilings, for child care and development services provided.

Section 18074.2(b). This subsection has been amended by deleting the *California Health and Safety Code* and *California Code of Regulations* citations and replacing them with the phrase, "all other providers," in order to simplify and clarify the subsection. This subsection is necessary to establish that license-exempt providers not described in subsection 18074.2(a) shall be reimbursed at their established rate not to exceed 90 percent of the maximum payment rate for licensed family child care providers, according to the applicable RMR survey.

Section 18074.3. Establishment of Provider Rate. This section is necessary because a standard procedure is needed for converting a provider's established rate in one rate category into a rate that corresponds to another rate category. This calculation would be utilized, for example, when a provider has only an established hourly rate but the family's certified need requires use of a weekly or monthly rate.

Section 18075. Reimbursement Rate Categories. This section is necessary to define and establish limitations on the use of certain rate categories, including hourly, daily, part-time weekly, full-time weekly, part-time monthly, and full-time monthly.

Section 18075.1 Rate Adjustment for Evenings and/or Weekends for Licensed Providers. This section is necessary in order to clarify and standardize the use of adjusted rates for child care and development services provided during evening or weekend hours, or both.

Section 18075.2. Rate Adjustment for Children with Exceptional Needs. This section is necessary in order to clarify and standardize rate adjustments for reimbursement for child care and development services provided to children with exceptional needs, as defined in *Education Code* section 8208(l), or a child with severe disabilities, as defined in *Education Code* section 8208(x).

Section 18076. Limitations on Reimbursement. This section is necessary in order to specify that contractors shall only provide reimbursement using a single rate category, unless using more than one category results in a lower reimbursement rate to the provider or during times when services are provided on an occasional, unscheduled basis. This section also permits a contractor to reimburse a provider at a rate that exceeds the RMR ceilings if there are no more than two providers in a given area that can meet the family's needs.

Section 18076.1. Provider Payment. This section is necessary in order to allow the family to pay the difference between the RMR ceiling and the provider's established rate so that the family may, if it chooses, use a provider whose established rate is higher than the RMR ceiling. This section also obligates the contractor to pay registration, materials, or insurance fees charged by the provider, as long as the same fee is charged to nonsubsidized families and the fee does not exceed the maximum payment rate.

Section 18076.1(c). Delete "and/" for purposes of syntax.

Section 18076.2(c)(2). Delete "maximum payment rate" and replace with "regional market rate ceiling" for technical clarification.

Section 18076.2. Reimbursement for Absences. This section is necessary in order to clarify when the child's regular provider is to be paid for the child's absence or the provider's scheduled holiday. This section is also necessary in order to clarify circumstances in which an alternate provider may be utilized and reimbursed for the child's care, such as for the child's illness or the regular provider's scheduled holiday.

California Code of Regulations, Title 5, Education, Chapter 19.5:

Section 18413. Provider Payments. Deletions and amendments to this section are necessary in order to comply with 2003-2004 Budget Act language requiring the California Department of Education (CDE) to change the ceiling to which providers may be reimbursed to the 85th percentile of the market survey of providers offering the same type of child care for the same age child. Deletions and amendments to this section are also necessary in order to establish that these regulations apply to all contractors that use the RMR to calculate provider reimbursement. Provisions deleted in this section have been transferred to Subchapter 2.5.

Section 18428. Provider Payments. Deletions and amendments to this section are necessary in order to comply with 2003-2004 Budget Act language requiring the California Department of Education (CDE) to change the ceiling to which providers may be reimbursed to the 85th percentile of the market survey of providers offering the same type of child care for the same age child. Deletions and amendments to this section are also necessary in order to establish that these regulations apply to all contractors that use the RMR to calculate provider reimbursement. Provisions deleted in this Section have been transferred to Subchapter 2.5.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

2003-2004 Regional Market Rate Survey. Budget Act language in 2002-2003 directed CDE to continue to use the 2001 RMR survey until the CDE and the Department of Social Services (DSS) developed new survey methodology to be employed by future market rate surveys. Early in 2003-2003 it was determined by CDD, DSS, and the Department of Finance (DOF) that it would be impossible to develop new methodology and conduct an RMR survey in time for an October 1, 2003 implementation. Instead it was determined that the RMR survey conducted in 2002 would be re-analyzed using new methodology. This re-analysis was completed and the changes are reflected in the 2003-2004 RMR Survey.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES.

No other alternatives were presented to or considered by the Superintendent of Public Instruction (Superintendent).

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.

The Superintendent has not identified any alternatives that would lessen any adverse impact on small business.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS.

The proposed regulations would not have a significant adverse economic impact on any business. However, lower reimbursement amounts are possible for some individual providers.